

IN THE MATTER OF

SUSAN JOHNS SMITH

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 08-048C

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DECISION AND ORDER

On December 22, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Susan Johns Smith for a two-family dwelling conditional use in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.N.48 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioner was not represented by counsel. Susan Johns Smith testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 6th Election District on the east side of Old Columbia Road, about 2,500 feet north of Johns Hopkins Road. It is referenced as Tax Map 41, Grid 18, as Parcel 245 and has a street address of 7545 Old Columbia Road (the "Property").

2. The 5.19- acre irregularly shaped Property is accessed from a 50-foot wide, paved, shared driveway, off of which is a gravel driveway leading to the existing dwelling situated in the Property's northeast section and about 110 feet from the shared driveway. The Property is predominately wooded and has about a 50-foot drop in elevation from the area just south of the dwelling to the western lot frontage.

3. Vicinal Properties. All adjacent properties are also zoned R-20. To the North, the properties are generally improved with single-family dwellings with driveway access to Old Columbia Road, and these are a substantial distance from the subject dwelling. Parcel 395 was subdivided in August 2008 into the 19-lot Kinder Overlook subdivision.

4. Old Columbia Road in this location has two travel lanes and about 25 feet of paving within US 29's, wide, variable right-of way. The posed speed limit is 30 miles per hour. No traffic data is available.

5. The Property is served by private water and sewerage facilities. The Bureau of Health comments inform the Petitioner that the current septic system is inadequate for the conversion and must be improved.

6. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Areas." The General Plan Transportation Map does not depict this section of Old Columbia Road, it being relatively new.

7. The Petitioner, the property owner, is proposing to convert the existing split-level single-family detached dwelling into a Two-Family Dwelling. The dwelling has four bedrooms and three full bathrooms and is rented out. The conversion would involve constructing a partition at the bottom of the stairs leading to the upper level, and installing a new kitchen on the lower level. The conversion would create one dwelling accessed from the existing front door, with two bedrooms and two baths, and a second dwelling on the lower level with two bedrooms, one full bath, and access from a rear door. No changes would be made to the dwelling's outward appearance.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

A. Harmony with the General Plan. Section 131.B.1 requires me to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the R-20. In evaluating a plan under this standard, I must consider (a) the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

In this case, the proposed use is still a residential use, although it would involve the conversion of a single-family dwelling into a two-family dwelling. A two-family dwelling is therefore an appropriate use for the area. The existing internal and external driveways also appear adequate to accommodate the moderate increase in traffic, and the external shared driveway is

accessed from Columbia Road. Accordingly, the nature and intensity of the operation, the size of the Property in relation to the use, and the location of the Property with respect to streets giving access to the Property, are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.

B. Adverse Impacts. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the General Plan, compatibility with the neighborhood is measured under Section 131.B.2's four "adverse effect" criteria": (a) physical conditions; (b) structures and landscaping; (c) parking areas and loading, and; (4) access.

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed use would have adverse effects in a PEC district. The proper question is whether those adverse effects are greater at the proposed site than they would be generally elsewhere within the PEC district. *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery County*, 107 Md. App. 1, 666 A.2d 1253 (1995).

For the reasons stated below, the Petitioner has met its burden of presenting sufficient evidence under Section 131.B.2 of the Zoning Regulations to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a two-family dwelling in an R-20 district.

a. Physical Conditions. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The testimony and evidence indicate the proposed conversion will not generate inordinate noise, significant outdoor lighting, or other physical effects detectable within the neighborhood. No new lighting is proposed and the dwelling is more than 100 feet from the shared driveway and some distance from existing dwellings. Consequently, I conclude the Petitioner has adequately shown that noise, lighting, or other physical conditions generated by the proposed use will not be greater than that which is ordinarily associated with a two-family dwelling in the district.

b. Structures and Landscaping. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.

Based on the evidence, I conclude the Petitioner has met its burden of demonstrating the proposed use complies with Section 131.B.2.b. The record indicates the height of the existing dwelling will not be increased and the existing dwelling, which is currently rented out, is more than 100 feet from the driveway. Because the lot is heavily wooded, the existing dwelling is buffered by natural landscaping. There is no material evidence that the inherent operational characteristics of the proposed two-family dwelling gasoline service station will discourage the use of adjacent land and structures.

c. Parking and Loading. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.

The gravel driveway will provide adequate parking.

d. Access. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

The use of the existing, 50-foot shared driveway will continue to provide safe access with adequate sight distance.

II. Specific Criteria for Two-Family Dwellings (Section 131.N.48.a)

a. Two-family dwellings: in the RC, RR, R-ED, R-20 or R-12 Districts, provided that the two-family dwelling is on an individual lot, with only one two-family dwelling permitted on one lot, and the lot is an existing recorded lot at the time of the conditional use application. The minimum lot size shall be at least 16,000 square-feet for two-family dwelling structures in the R-ED and R-12 Zoning Districts.

The elevations and floor plans accompanying the petition indicate the proposed two-family dwelling is located on one lot, and is compatible in scale and character with the surrounding residential neighborhood as required by Section 131.N.48.a. The proposed structure will meet or exceed all setbacks. According to the TSR, the lot was subdivided in the 1970s and is more than five acres in size, in compliance with Section 131.N.48.a.

b. Section 131.N.48.b does not apply.

c. Section 131.N.48.b does not apply.

ORDER

Based upon the foregoing, it is this 12th day of January 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

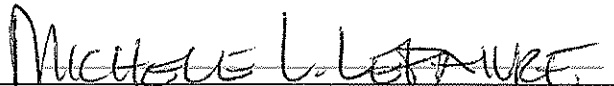
That the petition of Susan Johns Smith for a two-family dwelling conditional use in an R-20 (Residential: Single) Zoning District, is hereby **GRANTED;**

Provided, however, that:

1. The conditional use shall apply only to the uses and structures as described in the petition and conditional use plan submitted, and not to any other activities, uses, structures, or additions on the Site.
2. The Petitioner shall comply with all Technical Staff Reports comments (including attached comments) before commencing the use.

The Petitioner shall obtain a two-family rental license before commencing the use.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 1/13/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.